IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3786 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PURSHOTTAM @ FAKIRBHAI BHIKHABHAI PATEL

Versus

UNDER SECRETARY

Appearance:

1. Special Civil Application No. 3786 of 2001

MR MAHENDRA K PATEL for Petitioner

MR JS YADAV for Respondent No. 1

MR HC PATEL, Ld. AGP for Respondent No.2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 30/07/2001

C.A.V. JUDGEMENT

1. Rule. Service of rule is waived by Shri J.S.Yadav, learned Addl.Standing Counsel for the respondent No.1 and Mr.H.C.Patel, learned AGP for the respondent No.2.

2. Purshottam @ Fakirbhai Bhikabhai Patel, petitioner - freedom fighter, a senior citizen, has filed this petition before this Court under Articles 226/227 of the Constitution of India, challenging the order dated 30th March, 2001, passed by Under Secretary, Freedom Fighters Division, Ministry of Home Affairs, Government of India, respondent No.1. It has been contended in the petition that, by the aforesaid order dated 30th March, 2001, the respondent No.1 has rejected the claim of the petitioner for Swatantra Sainik Samman Pension Scheme, 1980 (hereinafter referred to as `S.S.S. Pension Scheme').

3. The facts giving rise to this petition are as under:

3.1 The petitioner is a freedom fighter (Swatantra Sainik). Earlier the petitioner was an practising advocate in Dholka Court. Now the petitioner is an old aged about 82 years. It has been contended in the petition that petitioner is fully entitled to get the pension from the beginning as he is a freedom fighter and having all requisite qualification to get S.S.S. Pension as per the Scheme of the Central Government.

3.2 It has been contended that petitioner actively participated in freedom fight known as "Quit India Movement". In this freedom fight, the petitioner was detained and kept in jail for more than 10 months which he has proved many times before the respondent authorities by producing all the possible evidence.

3.3 It has been stated that this S.S.S. Pension scheme has been introduced to give respect and honour to freedom fighter who had actively participated in the Quit India Movement. Therefore, looking to the object of the scheme, the Government has to locate freedom fighters to fulfill the object of the scheme and to give honour and respect to the freedom fighter in the real sense instead of raising unnecessary query and technical objection in this behalf. It has been stated in the petition that the petitioner has been granted S.S.S. Pension by the State Government and the petitioner is also fully entitled to get the same benefit from the Central Government. It has been stated that the criteria of six months imprisonment is already fulfilled and therefore the State Government after examining all aspects have recommended the respondent No.1 to grant S.S.S. Pension to the petitioner.

3.4 In view of the aforesaid circumstances, it has

been stated in the petition that, somewhere on 30th June, 1996, petitioner had applied before the Central Government for S.S.S. Pension before the Central Government, under the prescribed form to the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi. Alongwith such application, he has annexed all requirements and necessary details, like certificate of Jail Superintendent and certificate of Swatantra Sainik Samaj, affidavit of co-prisoners, N.A.R.C. and other documents. Thereafter petitioner has also applied to the State Government giving all details and documents with a view to verify and recommend the same to the Central Government. Therefore petitioner has complied with all the conditions of both the respondent No.1 and 2. In view of the aforesaid application, the State Government has also recommended the petitioner's case as genuine and therefore, he is entitled for the S.S.S. Pension.

3.5 As stated earlier, it has been averred in the petition that the State Government has examined all aspects and considered the facts in details and finally it was found that petitioner is entitled for the S.S.S. Pension and therefore the State Government has recommended the name of the petitioner to respondent No.1 for the grant of S.S.S. Pension to the petitioner. It has been contended that respondent No.1 is seeking exact date of release which information was not possible after more than 50 years. Moreover, the petitioner has also tried to know the same from the Jail authority of Maharashtra & Gujarat but the same authority has denied that the same record is not available and therefore the Jail Authority has issued Non Available Record Certificate (NARC) which is the alternative under the Scheme.

3.5(A) The petitioner had applied for grant of pension under SSS Scheme 1980 with necessary documents in support of the same. The Central Government sent letter dated 26.5.1999 stating that the State Government had informed the Central Government that the petitioner's claim of having undergone imprisonment was not proved from the official records and that the genuineness of the petitioner's claim was not established. The State Government sent its communication dated 29.6.1999 to the Central Government contradicting the aforesaid stand adopted by the Central Government and stating that the State Government had already recommended for granting pension under SSS Pension Scheme vide State Government's letter dated 2.5.1998, and therefore, the State Government had recommended the petitioner's case after clearly stating that the petitioner had suffered an

imprisonment for a period more than six months and therefore the State Government recommended the petitioner's case in SSS Pension Scheme under the Scheme of 1980.

3.6 It has been stated that, when earlier the Central Government denied the pension, the petitioner filed a Special Civil Application No.6643 of 1999 before this Court. When the aforesaid matter was placed for hearing before this Court, this Court (Coram: M.S. Shah, J.) by its order dated 11.10.1999 passed the following operative order:

> "Mr.U.I.Vyas, learned Addl.Standing Counsel appearing for the Central Government states that he has no instructions in the matter. However, in view of the aforesaid clear stand of the State Government as mentioned in the letter dated 2.5.98, a copy of which was also supplied to Mr.U.I.Vyas, this petition deserves to be allowed and the Union of India is required to be directed to consider the petitioner's case for pension under SSS Pension Scheme, 1980 as expeditiously as possible and in any case within one month from the date of the receipt of a certified copy of this order or the writ of this Court whichever is earlier."

> "The petition has been required to be filed in view of the letter dated 26.5.1999 (Annexure-G) from the Under Secretary to the Government of India and Ministry of Home Affairs which is absolutely contrary to the letter dated 2.5.1998 of the State Government. It is, therefore, just and proper to saddle respondent No.1 with the costs of this petition which are quantified at Rs.2,000/-. The costs shall be paid within one month from the date of receipt of a certified copy of this order."

3.7 Pursuant to the aforesaid order of this Court, the State Government had made a recommendation dated 19.11.1999 alongwith various supporting documents. However, vide order dated 30.11.1999 the claim of the petitioner was rejected stating that there were over writings in the certificate issued by the co-prisoner and moreover the date of release from Ahmedabad Central Jail, Sabarmati had also not been specified and, therefore, it was stated that as per the scheme the period of imprisonment of over six months had not been proved and hence the petitioner cannot be treated to be eligible for

pension under the said Scheme.

3.8 On receipt of this Court's order dated 30.11.1999 the petitioner wrote a letter to the Central Government on 4.12.1999 requesting reconsideration of its earlier stand. The Central Government vide its communication dated 11.1.2000 stated that the representation for review should be forwarded only through the State Government. Accordingly, the petitioner informed on 17.1.2000 that his representation for review had already been forwarded through the State Government vide letter dated January 7, 2000.

3.9 It appears that against the aforesaid action of the respondent No.1, the petitioner filed Special Civil Application No.1403/2000 before this Court. When the aforesaid matter was placed for hearing before this Court, it appears that the affidavit dated 22.5.2000 has been filed on behalf of the respondent No.1. In the said affidavit, the facts which are already there in earlier order dated 30.11.1999 have been reiterated with emphasis. When the aforesaid matter was placed for hearing before this Court, this Court (Coram: D.A. Mehta, J.) has pointed out to the learned advocate for the respondent that, from the affidavit-in-reply the entire correspondence in the representation for review dated 7.1.2000 have not been taken into consideration by the authority concerned. When this was pointed out to the learned counsel for respondent No.1 she readily agreed and accepted that affidavit-in-reply pertained only to events upto 30.11.1999 and further correspondence including recommendation for review by the State Government alongwith the clarificatory certificate dated 10.12.1999 issued by the co-prisoner have not been taken into consideration by the authority.

3.10 In view of the same, this Court (Coram: D.A.Mehta,J.) on 8.2.2001 pleased to pass following order particularly para 6 reads as follows:

> "In view of the aforesaid fact situation this petition deserves to be allowed and the Union of India is hereby directed to reconsider the petitioner's case for pension under the Swatantra Sainik Samman Pension Scheme, 1980 in a favourable manner. Respondent No.1 is directed to decide the recommendation for review taking into consideration all the documents and correspondence produced both before and after the order dated 30.11.1999 and such decision should be arrived at as expeditiously as possible and in

any case within four weeks from the date of the receipt of the writ of this Court or certified copy of this order, whichever is earlier. The order dated 30.11.1999 (Annex."D") passed by respondent no.1 is hereby quashed. In view of the fact that the representation for review had been forwarded through the State Government as far back as 7.1.2000 and yet respondent no.1 has not taken the same into consideration even at the stage of swearing the affidavit in reply in May, 2000, it is just and proper that respondent no.1 should be saddled with costs of this petition which are quantified at Rs.2,000/-. The costs shall be paid within a period of four weeks from the date of the receipt of certified copy of this order. Rule is made absolute in the aforesaid terms."

3.11 After the aforesaid order of this Court, the respondent No.1 has passed the order dated 30th March, 2001, and has rejected the claim vide communication dated 30.3.2001 on the ground that there is no specific date when petitioner was released from the prison. It has been further stated that though the State Government has recommended the case, it has been observed by the Central Government that, it is not obligatory to accept the recommendations of the State Govt. and this Ministry can differ with the recommendations of the State Govt. The Central Government also did not accept the certificate issued by Shri Naval Chand Nemi Chand Shah, Ex-Minister Gujarat, in which it was indicated that the petitioner was in jail from the period from 23.9.1942 to 24.9.1943. The certificate issued by Shri Becharbhai Virambhai Thakor has also not been considered as the same is not in the prescribed format. The jail certificate issued by Suptd. Ahmedabad Central Prison, Sabarmati also does not indicate the date of the release of the petitioner.

3.12 Being aggrieved and dissatisfied with the aforesaid action of the respondent No.1, the present petition was filed somewhere on 24th May, 2001, and this Court has issued notice on 29th May, 2001.

4. Shri J.S.Yadav, learned Addl.Standing Counsel appearing on behalf of respondent No.1-Union of India and Mr.H.C.Patel, learned AGP appearing on behalf of the respondent No.2.

5. The learned advocate for the petitioner has assailed the aforesaid order of the Central Government on various grounds. He has submitted that the decision of

the respondent No.1 is prolonging simple case of the petitioner which could have been decided by the respondent No.1 because whatever the information is required by the respondent No.1 itself can verify the jail certificate and the detention order was passed under the Defence of India Rule 26V and the same authority was competent under the Act. The District Magistrate of Ahmedabad had passed the order of detention. It has been stated that all the relevant records which have been available with the petitioner has been supplied to the respondent No.1, however, the contention of the petitioner has been rejected by the Central Government only on technical grounds. The Central Government ought to have consider that when the Ex-Minister of Gujarat Shri Naval Chand Nemi Chand Shah has stated that the petitioner was in jail during the period from 23.9.1942 to 24.9.1943 and he has suffered during that period for more than six months imprisonment, inspite of the categorically affidavit by Ex-Minister of Gujarat State, the Central Government has unnecessary on technical ground rejected the claim of the petitioner that the petitioner has not specifically indicated the exact date of release. Therefore the contention taken by the Central Government that the petitioner has not indicated the exact date of release and even the jail certificate issued by Ahmedabad Prison does not indicate the date of release is an absolutely technical contention taken by the Central Government and the Central Government has not taken relevant factor and has taken into consideration the irrelevant factor in this behalf. The Central Government has not taken into consideration two further orders of this Court; one order passed by Justice M.S.Shah vide order dated 11th October, 1999 and another order passed by Justice D.A.Mehta vide order dated 8th February, 2001. Without considering these two decisions of the High Court, which is binding on the Central Government, the Central Government has passed the order.

5.1 Learned advocate for the petitioner has also relied upon the judgment of Hon'ble Supreme Court in the case of Narayanan Vs. Union of India reported in AIR 1990 SC 746. In para 10 the Hon'ble Supreme Court has observed as under:

> "The Scheme has been formulated with a view to acknowledge the services rendered to the country by patriotic citizens during the freedom movement and who had suffered at the hands of British Rulers in one way or the other and to compensate them in some measure for their sacrifices for the sake of the country."

5.2 Learned advocate for the petitioner has also relied upon another judgment of the Apex Court in the case of Surja and others Vs. Union of India and another reported in (1991) 4 SCC 366. In para 7 on page 367 the Hon'ble Supreme Court has observed as under:

"Freedom Fighters' Pension Scheme of 1972 was renamed as "Swatantra Sainik Samman Pension Scheme, 1980". The brochure published by the Union of India indicates: "A person who had suffered a minimum punishment for six months in the mainland jails before independence in the struggle for independence is eligible to be admitted to the benefits of the pension." It has already been indicated that each of the petitioners had been convicted and was ordered to suffer imprisonment of more than six months. The petitioners' assertion that they did not claim remission has not been doubted or disputed. In the facts of the case it would be appropriate to hold that each of the petitioners satisfied the condition for earning the benefit of pension and the fact that while undergoing sentence which was for a period beyond six months remission had been granted and they were let off earlier would not take away their right to earn pension. Learned Attorney General appearing for the respondents has accepted this construction of the entitlement clause."

5.3 Learned advocate for the petitioner has relied upon the judgment of the Apex Court in the case of Mukund Lal Bhandari and others Vs. Union of India and others reported in AIR 1993 S.C. 2127, where the Division Bench of the Hon'ble Supreme Court in para 4 has observed as under:

"As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly."

"As regards the contention that the petitioners had filed their applications after the date

prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have know grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it will behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit."

5.4 Learned advocate for the petitioner has invited my attention to the judgment of this Court in the case of Late Ambalal Ratnabhai Through his Widow Smt. Santokben Ambalal Vs. Government of India & Anr. reported in 1995(1) GLR 289, where the learned Single Judge has considered the entire scheme and in paragraphs 2,3 and 5 of the said judgment has been quoted with a view to see that the entire scheme of the Act can be understood, which reads as under:

"para.2 In the year 1972, on the eve of the Silver Jubilee of the Independence Day, central scheme for grant of pension to freedom fighters and their families was introduced by the Government of India in the name of Freedom Fighters' Pension Scheme, 1972. This scheme commenced with effect from 15-8-1972 and provided for grant of pension to living freedom fighters and their families if they are no more and to the families of martyrs. The minimum pension sanctioned to the freedom fighters was Rs.200/per month and for their families varied from Rs.100/to Rs.200/- in accordance with the size and number of eligible dependants. The benefit of the Pension Scheme has been extended to all freedom fighters. The benefit of the scheme was available only to the persons whose annual income does not exceed Rs.5000/-. This scheme was liberalised with effect from 1-8-1980 and the benefit of the scheme was extended to all the freedom fighters as a token of `Samman'. Thus, the 1980 Pension Scheme is also known as `Samman Scheme'.

"Para.3 The maximum quantum of pension was also increased from Rs.200/- to Rs.300/- for freedom fighters and the minimum was enhanced from Rs.100/- to Rs.200/- to widows of the late freedom fighters with an addition of Rs.50/- per months per each unmarried daughter with a maximum of Rs.300/- per month. Clause IV of the Scheme provides eligibility for the `Samman Pension' as under:

(a) a person who has suffered minimum imprisonment of six months. In case of women and persons belongs to SC/ST categories, the actual period of imprisonment has been reduced to three months;

(b) a person who has remained underground for more than six months provided he was a proclaimed offender or one whom against award for arrest/warrant was announced or one whose detention order was issued but not served;

(c) a person interned in his home or externed from his District provided for the period

of externment was not less than six months;

(d) a person whose property was confiscated or attached and sold due to participation in the freedom struggle;

(e) a person who became permanently incapacitated during the firing or lathicharge;

(f) a person who lost his job from Central or State Government and thus means of livelihood is affected after participation in national movement.

This scheme provides that person who considers thus eligible for `Samman Pension' under the scheme should apply in duplicate in the prescribed application form. Such application form is required to be accompanied by required documents as proof of claim of suffering. The second copy is required to be sent to the Deputy Secretary to the Government of India, Freedom Fighters' Division, Ministry of Home Affairs. Clause 9 provides the manner of proving the claim. In order to establish a claim on the ground of imprisonment/detention, a certificate from the concerned jail authorities, District Magistrate, or the State Government is required to be produced. However, in case of non-availability of such certificate of imprisonment or the detention can be established alternatively by a certificate of co-prisoners or certificate from sitting MP or MLA or from ex-MP or ex-MLA certifying the jail period.

"Para.5 This scheme further provides that the claim of the applicant shall be scrutinised by the State Government in consultation with State Advisory Committee after receipt of the said verification and entitlement to pension report, the claim of the applicant is scrutinised and if found to be eligible, the pension is to be granted."

The learned Single Judge after considering the Narayanan's case has observed in para 12 as under:

"Thus, the object of the Scheme is to honour and wherever necessary, to mitigate the sufferings of

those who had given their lives for the country in its hour of need. The spirit of the Scheme was thus to assist and honour the needy and acknowledge their sacrifice. It is not in dispute that though the petitioners were reinstated they were not paid salary for the period they lost their jobs. Thus, they lost their livelihood for participation in the National movement. It is further significant to notice that sub-clause(f) of the Scheme 1980 simply says `loss of job' and not `loss of permanent job'. The word `permanent' cannot be permitted to be read in sub-clause (f). A plain reading of sub-clause (f) with the objectives of the scheme only suggests that the persons who lost their jobs irrespective of the fact that they were reinstated later on, on account of their sufferings will be covered by sub-clause (f). If the contention of the learned Counsel for the respondents is accepted, it would be opposed to the plain reading of sub-clause (f). It will also lead to the absurdity that while persons who were engaged in business or elsewhere and who participated in the National movement on account of which they suffered but took up the business after the freedom struggle movement, will be entitled to the Scheme of 1980, but not the persons like the petitioners in the present group of petitions. As already stated, the pension is not only a compensation but is an honour for the service rendered by them. So far as the circular referred to by Mr. Ajmera is concerned, even a plain reading would show that it covers only cases where arrears of pay was not given. The Cabinet decision is that persons who are dismissed, removed, resigned from service and later on reinstated, re-employed or given benefits including arrears of pay are not eligible under the Scheme. Thus, it may apply to cases where a person who was dismissed or removed from service, but he was reinstated and given benefit including payment of arrears of pay."

5.5 The learned Single Judge after relying upon the Mukund Lal Bhandari's case (supra) and also observed that the pension shall be made payable from the date of which the Scheme is made. The learned Single Judge further submitted that the Scheme of 1980 so far as the date of submission of application is concerned, the relevant date would be the date on which the first application was submitted by the individual petitioner, irrespective of

the fact whether the application was accompanied by the necessary proof of eligibility or not. Thus, the concerned authority will determine the date of submission of the first application under the Scheme.

5.6 Learned advocate for the petitioner has also relied upon the judgment of this Court in the case of Manibhai Nathji Pandya Vs. Government of India & Another reported in 1998(1) G.L.H. 180. In that case the Court has considered the Scheme of 1980. In para 10 after considering the facts of the case, the Court has observed as under:

"In view of these averments, it is clear that the respondents have taken too technical a view in the matter by insisting for the compliance of each and every clauses of the Scheme. This being a Scheme for the benefit of freedom fighters, a liberal and broad view is expected to be taken. If the petitioner has fulfilled substantial compliance of the requirements of the Scheme, in that event, the authorities should always accept the same rather than insisting for the total compliance thereof. This, of course, is a matter of record. However, considering the time-lag between the freedom struggle and the date of application, and the non-availability of record, it is difficult for the petitioner, who is bound to be an aged person, to obtain each and every detail as envisaged in the Scheme. Equally, he may find it difficult to get the co-prisoner's certificate also and the help from the M.P. or the M.L.A. When the concerned authorities insisted for the production of jail certificate or the NARC (Non-availability of record certificate), on the basis of the details submitted by the petitioner in the application, can the respondent-authorities not inquire from the jail authorities? I think it is high time that the respondent authorities should use their machinery in procuring the details which are available and necessary from the concerned authorities for the purpose of verification of the facts stated in the application and the documents produced alongwith the same rather than insisting the same from the freedom fighter. When the Nation is celebrating the 50th year of its independence, it would be in the fitness of thing to provide whatever benefits which are available to the freedom fighters by preparing list of such freedom fighters and collecting

necessary information regarding the part played by them in the freedom struggle rather than asking them to make such applications to the authorities."

5.7 Learned advocate for the petitioner has also relied upon the judgment of this Court in the case of Pathabhai Ranchhodbhai Rathod Vs. State of Gujarat decided on 13.6.2000 by this Court (Coram: M.S.Shah, J.) in Special Civil Application No.9824 of 1999. In paragraph 5 after relying upon the Mukund Lal Bhandari's case (supra) has observed as under:

"Having heard learned counsel for the parties.

It appears that there is some force in the submission made on behalf of the petitioner. In Mukund Lal Bhandari's case (supra) the Hon'ble Supreme Court has held that benefit of pension to freedom fighter would flow from the date of the application. The petitioner had applied for freedom fighter's pension on 29.10.1980 and when the petitioner is found entitled to pension as per the Government decision dated 21.3.1989 (Annexure-I) the principle laid down in the aforesaid judgment of the Apex Court would be applicable to the petitioner's case."

5.8 Learned advocate for the petitioner has also relied upon the judgment of this Court in the case of Mahendra Ashabhai Patel Vs. Union of India & Others reported in 1997(2) GLR 1270. In para 9 on page 1275 this Court has observed as under:

"When a representation is made by any person to the Government or a public authority raising his claim on certain documents which he annexes to his application, it is the duty of the Public Officer or the Central Government to consider all those documents and then to take its decision. Now in the instant case, the petitioner had annexed along with his application for getting a pension under the Freedom Fighters' Pension Scheme all the documents which were sufficient to support his claim of pension. Therefore, it will have to be presumed by the Court that all those documents which were annexed by the petitioner along with his application were considered by the public authority, i.e. the Union Government. If the union Government does not record a finding that the documents produced by the applicant along with his application are not acceptable to

the Government for certain reasons, then it will have to be presumed that there was no objection for accepting the said documents. When the petitioner preferred his claim by producing the documents on which he was relying and when his claim was rejected for only those reasons mentioned in the order of rejection."

In para 10 on page 1276 this Court has observed as under:

"In these circumstances, it is not necessary to direct the Central Government to reconsider the case of the petitioner. It is also necessary to mention here that the certificates annexed by the petitioner to his claim petition were scrutinized by the State Government and had found them to be correct and proper, and, therefore, the State Government had supported his claim. Therefore, in the circumstances, it would be unjust and improper to again ask the Central Government to consider the claim of the petitioner. Therefore, in view of the above reasons, I am unable to accept the arguments of Mr. Ajmera, the learned Advocate for the respondent-Union of India that I should remit the matter to the Central Government to reconsider the documents produced by the petitioner along with his application."

5.9 He has also relied upon the judgment of this Court in Special Civil Application No.1727 of 1999 decided on 19.7.1999 by this Court (Coram: M.R.Calla, J.). In para 7 the Court has held as under:

"It is a dismal fact that the petitioner at this age had to approach this Court for the purpose of getting SSS Pension under the 1980 Scheme, to which she was fully entitled and yet denied by the respondent No.1. Such a just and honest claim of the petitioner should have been accepted by the respondent No.1 and it was not at all a case for showing a litigious perseverance to resist the just and honest claim of the widow of a freedom fighter for no legal justification. In the facts and circumstances of the case, the communication dated 6.8.98 is held to be illegal and the same is set aside. The respondent-Union of India is directed to grant the SSS Pension to the petitioner under the SSS Pension Scheme of 1980 from the date of her entitlement with

interest at the rate of 12 per cent per annum from the date of her application. The entire amount shall be paid at the earliest possible opportunity but in no case later than two months from the date the certified copy of this order is produced before the concerned authorities. This Special Civil Application is allowed accordingly and it is further ordered that in case the respondents fail to pay the due amount as aforesaid to the petitioner within a period of two months, as stated above, the petitioner shall also be entitled to the interest on the due amount at the rate of 18 per cent per annum from the date of the expiry of two months. Rule is made absolute in the terms, as aforesaid. No order as to costs."

5.10 Learned advocate for the petitioner has also relied upon the judgment of Bombay High Court in the case of Ramchandra D. Erande Vs. Union of India and another reported in AIR 1997 Bombay 129. In para 5 the Court has observed as under:

"Surely the Central Government if it had taken pains would have seen that the very fact that the State Government had scrutinised the application of the petitioner and had recommended the same as stated in its letter dated 15th October, 1984 in fact dispensed with further detailed verification on the part of the Central Government. In this view of the matter, we do no see any substance in this objection also."

5.11 He has also relied upon the judgment in the case of K.S.Velusamy Vs. The Government of India and another reported in AIR 2000 Madras 42. On page 43 the Court has observed as under:

"In the light of the pronouncement of the Division Bench inasmuch as the petitioner was granted State Pension as referred above even from 29-7-1991, the first respondent is not justified in passing the impugned order rejecting the claim of the petitioner for Central Freedom Fighters Pension. Without going into the other aspects inasmuch as the petitioner is getting pension from State Government, in the light of the above said pronouncement the impugned order is set aside and the matter remitted to the first respondent for fresh disposal. The first respondent is hereby directed to reconsider and

pass orders within a period of four months from the date of receipt of a copy of this order. First respondent is also directed to consider the claim of the petitioner with reference to the order of the 2nd respondent dated 29-7-1981 granting State Freedom Fighters Pension as well as the guidelines made by the Division Bench in R.Thangavelu V. Government of India, 1994 Writ LR 137."

6. I have also considered the impugned order dated 30th March, 2001, which has been produced by petitioner at Page 24 of the petition. The Central Government has rejected the application of the petitioner on following grounds:

(a) The grant of pension you (petitioner) have not not indicated any specific date when you were released from the prison.

(b) Though the State Government has recommended the case of the petitioner, the Non-availability of records certificate (NARC) furnished by the State Government is also not as per the required format and also incomplete.

(c) It was also stated that though the State Government has recommended his case, the Union Government can differ with the recommendations of the State Government.

(d) It was further stated that the Co-prisoners certificate furnished by Shri Naval Chand Nemi Chand Shah, Ex-Minister, Gujarat, does not indicate exact period of imprisonment and date of release from prison though in the said paragraph it has been stated that the certifier has stated that he (certifier) was lodged in Sabarmati & Visapur Jails along with you during the period from 23.9.1942 to 24.9.1943, whereever you have claimed jail suffering in Central Jail, Ahmedabad.

(e) The certificate furnished by Shri Becharbhai Virambhai Thakor is also not in prescribed format as also the exact period of imprisonment of certifier himself and yourself has not been

indicated.

(f) The jail certificate issued by Suptd. Ahmedabad Central Prison, Sabarmati also does not indicate the date of your release.

(g) It has been further stated that it is found that the jail suffering of six months or more have not been established based on the evidence produced by you in support of your claim. However, the Ministry would be willing to consider your claim for pension, if acceptable evidence in support of your claim of jail suffering duly verified by the State Government alongwith the required NARC/CPC.

6.1 In my view all the reasons which have been given by the Union Government under the signature, Under Secretary to the Government of India, is nothing but an attempt to see that petitioner did not get pension in this behalf. When the Ex-Minister Shri Naval Chand Nemi Chand Shah certified that the petitioner was in Sabarmati Jail from 23.9.1942 to 24.9.1943 that means he was in jail for one year. In my view, the authority ought to have satisfied with this aspect also. They cannot doubt the statement made by Ex-Minister of Gujarat State in this behalf. When the date has been shown by Ex-Minister in other paragraphs, the stand of the Central Government that petitioner has not furnished the exact date of release is absolutely in contradictory terms. The Union Government must also relies the recommendations made by the State Government in this case. The State Government is one of the responsible body who had examined the case and thereafter recommend the case. The recommendation of the State Government cannot be brushed aside lightly by the Union Government on flimsy grounds. The reasons that the certificate furnished by Shri Becharbhai Virambhai Thakor is not in prescribed format is also a ground of no substance. The Government has to see the substance of the mater and not to see the procedure. The procedure cannot defeat the substance of the petitioner in this case. They would request the petitioner that certificate can be furnished in the prescribed format on that ground the certificate cannot be thrown away in this behalf. The Central Jail is situated at Sabarmati but sometime we call it Central Jail, Ahmedabad, or sometime we call it Central Jail, Sabarmati at Ahmedabad and, therefore, there was no difference when petitioner has stated that

he was prisoned at Central Jail, Ahmedabad, whereas the certificate of Shri Naval Chand Nemi Chand Shah, Ex-Minister of Gujarat shows that he was in Sabarmati Central Jail. So there is hardly difference between this fact. The fact is not relevant that in which jail he was detained but the fact which we have to taken into consideration is that whether the petitioner had suffered a minimum imprisonment of six months in the jails before independence. In my view, the authority has taken very high per technical view of the matter, particularly when the question of pension is concerned. They ought to have a take a just and beneficial approach has to be adopted by the authority in this behalf. In my view, none of the grounds suggested by the Union Government is sustainable at law. The authorities have also not considered the two previous orders of this Court in this behalf and, therefore, the action of the authority is illegal and bad in law.

6.2 I have considered the facts and circumstances of the case. I have also considered the fact that petitioner is 82 years of old Swantantra Sainik. He has amply proved that he is entitled to S.S.S. Pension scheme in this behalf. In fact, earlier this Court had already passed an order in Special Civil Appln.No.6643 of 1999 as well as Special Civil Appln.No.1403 of 2000 in spite of this order the Union of India did not grant pension in this behalf.

6.3 In my view, the person like petitioner, who is the senior citizen, who has sacrifice his life regarding freedom struggle, ought to have been respected with dignity and honour. The Officers of the Union of India must show high regard in this behalf. In fact, the legislature has also enacted very noble scheme with very good objective to see that senior citizens persons like this Swatantra Sainik are rewarded to some extent. I have referred to the judgments of the Hon'ble Supreme Court in the Narayanan's case (supra), Surja and other's case (supra) and Mukund Lal Bhandari's case (supra) and also the judgment of this Court in the case of Ambalal Ratnabhai and also the judgments of Bombay High Court and Madras High Court in this behalf. In view of all these catena of decisions, the legal position is well settled. All these judgments have held that the scheme has been formulated with a view to acknowledge the services rendered to the country by patriotic citizens during the freedom movement and who had suffered at the hands of British Rulers in one way or the other and to compensate them in some measure for their sacrifices for the sake of the country. In my view this scheme is in nature of

beneficial provisions and the provisions of the said scheme should be construed liberally. Unfortunately the officers particularly Union of India's Officers are construing the said scheme very narrow and very pedantic manner. They must realise and understand the noble objectives of the said scheme has been introduced with noble objective and the object of the scheme has to be fulfilled. Unfortunately by their action, the whole noble objectives of the scheme has been frustrated because of their narrow meaning.

7. In the facts and circumstances of this case and in view of the aforesaid discussion, this Special Civil Application is allowed. The communication dated 30th March, 2001, issued by the respondent No.1 denying the S.S.S. pension scheme to the petitioner is held to be illegal and the same is quashed and set aside. The respondent- Union of India is directed to grant the S.S.S. Pension Scheme of 1980 to the petitioner within three months from the date of receipt of judgment of this Court. The Union of India shall also pay pension to the petitioner from the date of the application till today with 12% interest thereon within three months from the date of the order. However, if the Union of India fails to pay the said amount within three months without obtaining any order from the Division Bench of this Court or the order from the Hon'ble Apex Court then the Union of India shall pay 15% interest on the said amount. Rule is made absolute. No order as to costs.

(K.M. Mehta, J.)

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